

Application No. 10/664,426  
Amendment and Response dated April 29, 2008  
Reply to Decision on Appeal dated February 29, 2008  
Docket No. 1421-58 DIV/RCE II  
Page 4

**REMARKS**

Applicants have concurrently filed a Request for Continued Examination and, therefore, respectfully request consideration of the above amendments and the following remarks prior to further examination of the present application.

Claims 22-25 are currently pending in this application. Claim 22 has been amended. The amendments are supported by disclosure appearing on page 19, ¶ [00062], pages 20-21, ¶¶ [00064]-[00065] and Fig. 13 of the application. New claim 25 has been added. The new claim is supported by disclosure appearing on pages 14-15, ¶ [00050] and Fig. 13 of the application.

**Applicants' Response to Rejection under 35 U.S.C. §103 over Friello in view of McDonald**

Claims 22-24 are rejected under 35 U.S.C. §103(a) as allegedly being unpatentable over U.S. Patent No. 4,250,196 to Friello (“Friello”) in view of U.S. Patent No. 3,062,662 to McDonald (“McDonald”). Applicants respectfully request reconsideration on the basis that the cited combination fails to render the claims obvious, as amended herein.

Applicants have amended independent claim 22 to further define the invention. In particular, Applicants have amended claim 22 to specify that the “outer layer of said hard candy material includes regions of reduced thickness having thicknesses less than other regions of said outer layer”, as shown in Fig. 13. In addition, amended claim 22 requires the intermediate layer of gum material to be “disposed adjacent said regions of reduced thickness”. Amended claim 22 also requires that “said semi-liquid material includes pectin in an amount of about 1.0 to 1.3% by weight of said lollipop product, said amount being sufficient to prevent said semi-liquid material from migrating out of said lollipop product at said regions of reduced thickness through said intermediate layer”.

Nowhere in Friello or McDonald is a three-phase lollipop product having this specifically recited format, as well as the required level of pectin in the semi-liquid center layer disclosed or

suggested. Neither Friello nor McDonald discloses a three-phase lollipop product. Further, neither reference discloses or suggests a product in which migration of a semi-liquid center layer through gum and candy layers at regions of reduced thickness in the outer candy layer is a concern.

Migration of the semi-liquid center layer material through the intermediate and outer layers is a particular concern in the present invention due, at least in part, to the manufacturing method used in making the lollipop products. A continuous manufacturing method is used, in which the regions of reduced thickness are formed in the outer hard candy layer. In particular, as described on pages 20-21 of the present application, the extruded rope of three-phase material travels through a lollipop forming mechanism. This mechanism includes circular die cavities that come together to form the individual lollipop products from the rope. The edges of the die cavities compress the rope, thereby forming regions of reduced thickness in the outer hard candy layer of the final product, as shown in Fig. 13. The intermediate gum layer is adjacent to these regions, also as shown in Fig. 13. Due to this format, migration of the semi-liquid center layer through the gum layer at the regions of reduced thickness becomes a concern.

As described on page 21 of the present application, the level of pectin included in the semi-liquid center layer material has been increased to address this concern. The amended claims require pectin to be present in the semi-liquid material in amounts of about 1.0 to 1.3% by weight of the lollipop product, which maintains a thicker composition in the center layer. This increased level of pectin thereby prevents the semi-liquid material from migrating through the gum layer and out the regions of reduced thickness in the outer candy layer of the product. Accordingly, a shelf stable final product is formed.

As mentioned above, neither Friello nor McDonald discloses a lollipop product having an outer hard candy layer with regions of reduced thickness, in which migration through an intermediate gum layer and out of these regions is a concern. Further, neither reference discloses

or suggests a product having the recited level of pectin in a semi-liquid center layer to prevent such migration. Furthermore, there would have been no reason to modify the teachings of these references to make a lollipop product having Applicants' specified characteristics. Neither reference discloses or suggests a continuous manufacturing method, as described in the present application, in which die cavities come together and compress the edges of the product during formation. As such, there would have been no reason to vary the format of the products disclosed in the cited references to include such regions of reduced thickness in an outer layer. Moreover, there would have been no appreciation for the specific migration problems raised by this manufacturing process, and thus the need to raise the pectin level in the semi-liquid center layer to address such problems.

In view thereof, the combination of Friello and McDonald fails to disclose or suggest Applicants' claims, as amended herein. Claim 22, and all claims which depend therefrom, are patentable over Friello and McDonald, each taken alone or in combination. Applicants respectfully request reconsideration and withdrawal of the Section 103 rejection based on this combination.

It also should be noted that Applicants have added new dependent claim 25. This claim further defines the lollipop product by adding a lollipop stick. Claim 25 specifically requires that the stick is "spaced from said center layer, said lollipop stick extending from said intermediate layer and through said outer layer". As described on pages 14-15, ¶ [00050] of the application, allowing the stick only to extend through the candy and gum layers maintains the integrity of the gum seal around the semi-liquid center layer. This prevents migration or leakage of the semi-liquid center layer. Such format is not disclosed or suggested in Friello or McDonald. Only McDonald discloses a sucker stick, and it extends through all portions of the product. Accordingly, claim 25 is additionally patentable over Friello and McDonald on this basis.

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Docket No. 1421-58 DIV/RCE II  
Page 7

In view thereof, claims 22-25 are believed to be in proper form for allowance. A favorable reconsideration of the application on the merits is earnestly solicited. Should the Examiner have any questions or comments concerning the above, the Examiner is respectfully invited to contact the undersigned attorney at the telephone number given below.

Respectfully submitted,



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